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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Surja Ram Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.999/2006

Against order dated 01.11.2006 passed by
Special Judge, NDPS Cases, Jodhpur in Criminal
Misc. Case No. 373/2006 (Surja Ram Vs. State of
Rajasthan).

DATE OF ORDER :: 10th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. G.M. Khan for petitioner.

BY THE COURT:

Petitioner Surja Ram in the instant petition moved under Sec. 397 of the Cr.P.C. has sought a direction to the Court of Special Judge, NDPS Cases to visit the place of occurrence in observance of its duty under Sec.310, Cr.P.C. after dismissal of his application moved for the purpose before the learned trial Court.

The contention of the learned counsel is that the trial Court has committed serious illegality in rejecting the application moved under Sec.310 of the Cr.P.C., whereby a request was made to inspect the site in view of evidence recorded in the Court. It has also been contended that had the Court inspected the site, it would have definitely reached to a conclusion that the entire prosecution story is false. According to him, in the facts and circumstances of the case, it is not possible to give any credence to the prosecution evidence.

I have considered the submissions made before me. I have also perused the impugned order passed by the learned trial Court.

It appears from the perusal of the impugned order passed by learned trial Court that evidence, which was recorded in the case, was sufficient to decide the matter. The Court has stated in Para 6 of the judgment as under:

“ मौजूदा प्रकरण में मुलजिम की ओर से भी साक्ष्य पेश की गई हैं और अभियोजन पक्ष की ओर से भी साक्ष्य पेश की गई हैं। विवाद केवल मात्र किवाड़ और पछित का था

या नहीं, ये ही हैं इसलिये सवा साल बाद के तथ्य को और मौका देखने के तथ्य को देखते हुए विवादित यह संक्षिप्त तथ्य जिनका कोई स्थाई अस्तित्व नहीं हैं और निर्विवादित भी नहीं कहा जा सकता। मौका स्थान का नहीं दिखाया जा रहा है बल्कि अस्थाई रूप से किवाड़ और पछित का दिखाया जा रहा है जिसके बारे में कोई टिप्पणी क्या करे, घटनास्थल पर जो कमरा बताया गया है उसके किवाड़ था या नहीं, मौका किवाड़ की उपस्थिति और पछित का देखना बहस अन्तिम सुनने के बाद उचित नहीं है, अगर गिरफ्तारी के तुरन्त बाद ये ही स्थिति आती तो कुछ विचारणीय बिन्दु हो सकता था लेकिन इन परिस्थितियों में और विवाद की विषय वस्तु ही किवाड़ और पछित हैं। कोई तथ्य स्थान के अस्तित्व का विवादित नहीं हैं इसलिये सुस्थापित सिद्धान्त के अनुरूप न्यायालय द्वारा मौका देखना उचित नहीं है।"

A perusal of Sec.310 of the Cr.P.C. reveals that ofcourse the Court is having competence to inspect site when it is considered essential but this provision cannot be invoked to compel the Court to inspect site as and when applications are moved under Sec.310 of the Cr.P.C.

The reasonings given by the learned trial Court, referred to above, clearly indicate that the trial Court found that it was not essential to inspect the site. The conclusion arrived by the learned trial Court appears to be reasonable and proper. Therefore, I am of the opinion that trial Court has committed no illegality or infirmity while rejecting the application under Sec.310 of the Cr.P.C.

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Accordingly, I do not find merit in this revision petition and the same deserves to be dismissed summarily. However, it is observed that observations made hereinabove will not affect the trial and the trial Court shall be free to complete the trial independently without being influenced by the observations made.

Accordingly, the petition stands dismissed summarily .

(SATYA PRAKASH PATHAK)J.

/jpa